IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.15118 of 2013**
**Date of Decision: 08.01.2016**

Prem Singh ... Petitioner

Versus

The State of Punjab and others ... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

Mr. S.P. Soi, Advocate,
for R-2 to 5.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J.**

1. The husband of a Government servant dying in harness is entitled to family pension in terms of the Punjab Government Circular dated December 23, 2011 which has been adopted by the respondent-Punjab State Power Corporation Limited vide its Finance Circular No.06/2012 published vide memo dated March 12, 2012 enhancing family pension payable to the family of a Government employee dying while in service. The Punjab Government issued circular dated December 23, 2011 enhancing family pension during the first seven years from the date of death or till the Government employee attains the age of superannuation had he or she survived, whichever period is less, by 60% of the pay of the deceased up to Rs.10,000/- or 50% of the pay subject to a minimum of Rs.6,000/- if the pay

was above Rs.10,000/- per month. After the period of first seven years is over the rate of enhanced family pension per mensem would stand reduced to 40% of the pay up to Rs.10,000/- and 30% subject to minimum of Rs.4,000/- per mensem if the pay is above Rs.10,000/-. This is the Punjab Government Scheme promulgated for the first time on December 21, 2009. Late Smt. Harjit Kaur, the petitioner's wife died on November 30, 2003. Her date of birth recorded in the service book is October 13, 1955. The scheme was amended by the Punjab Government vide letter dated July 25, 2011 which extended the period of 7 years to 10 years from the date of death etc., the ratio of family pension remaining the same as in the earlier circular. The scheme was further modified and the period of ten years extended to the first 15 years from the date of death vide letter dated December 23, 2011. This last order came into force on December 01, 2011. The letters of adoption of the schemes by the Corporation are dated October 28, 2011 (P-4), Circular No.46/2011 and letter dated March 12, 2012 (P-5), Circular No.06/2012. In this way, the period of first seven years in the case of the petitioner expired on December 01, 2010. The petitioner was in receipt of family pension w.e.f. December 01, 2003. Similarly, the period of 10 years would expire on December 01, 2013 and 15 years would expire on December 01, 2018.

2. The petitioner staked his claim to enhance family pension in terms of the adopted scheme by the Corporation by serving a legal notice dated February 18, 2013 communicated to the Corporation. The prayer was for revised enhanced rates in terms of paragraph 2 of the circular dated December 23, 2011 adopted by the Corporation on March 12, 2012 with

reference to paragraph 4 thereof.

3. In the notice, the petitioner referred to the memo dated June 13, 2012 (P-6), which was a clarification issued by the Indian Audit and Accounts Department office of the Accountant General (A&E), Punjab & UT Chandigarh. The clarification issued was as follows:-

> *"Please refer to your letter dated 3.5.12 on the subject cited above. As per para 4 of Govt. of Punjab, Department of Finance No. 3/39/09-3FPPC/1413 dated 23.12.2011, since the period of 10 years is not completed on 1.12.2011, hence enhanced rate mentioned in para 2 shall apply in this case."*

4. Even though the clarification was issued to the petitioner in his favour, the benefit of the enhanced rate was not made good. Instead of passing an order, the Corporation replied to the legal notice and denied entitlement to liberalized family pension assigning the following reasoning:-

> *"Para No. 2 of Legal Notice is wrong & denied, FC 46/2011 is applicable to a family pensioner who has not completed 7 years upto 01/07/2011 & as the subject cited family Pensioner has already completed 7 years upto 01.07.2011, FC 46/2011 is not applicable to the above family pensioner. FC 6/2012 is in continuation of FC 46/2011. Hence FC 6/2012 is also not applicable to the above Family Pensioner & he is not entitled to liberalized family pension beyond 30.11.2010."*

5. The currency of the period of enhancement was reckoned calculated retrospectively from the date of adoption.

6. The dispute raised has led to issuance of another clarification by the Indian Audit and Accounts Department delivered to the District Treasury Officer, Punjab regarding entitlement of enhanced family pension payable to the family of Government employee who dies in harness. The

advice is positively in favour of the petitioner which is best read in reproduction in verbatim:-

> *"In terms of Punjab Govt. vide their letter No. 3/39/09-3FPPC/1413 dated 23.12.2011 (Copy already endorsed to all D.T.O.s by the Punjab Govt.) the rate of family pension in respect of employees who die in harness have been elaborated. Enhanced rate of family pension in admissible during the first fifteen year from the date of death of the employee or attaining the age of 65 years of the deceased had he survived whichever is earlier. This enhanced rate is further admissible in those cases who where period of ten years of death has not been completed on 1.12.2011. Suitable instructions were issued to all DTO's vide this office letter No. Pen I/Clarification 12-13/4670-92 dated 12.07.12 with the request to make suitable entry in both halves of P.P.O.'s under proper attestation by all the D.T.O.'s but it has come to notice of this office through various Family Pensioners/Associations halves of PPO simply make endorsement on the application given by the family pension to the various banks which is not in order.*
>
> *As such, all the DTO's are again advised to call for both halves of PPO's of such cases from Banks/Pensioners and make suitable entry of enhanced rate of family pension/single rate of family pension with clear cut mention of date of effectiveness."*

7. The Accountant General was of the view that enhanced rates would be admissible in those cases where the period of 10 years of death has not been completed on December 01, 2011. Meaning thereby, persons like the petitioner would have an existing right to the enhancement during the currency of 10 years since the period would expire after December 01, 2011.

8. On notice issued on the writ petition, respondent Nos. 2 to 5 have appeared and contested the case by filing written statement. It is the

stand of the Respondents-2 to 5 (Corporation) that the Finance Circular 46/2011 is applicable to a family pensioner who has not completed 7 years from July 01, 2011 and since the period of 7 years expired before July 01, 2011. The circular is not applicable though it is admitted that Finance Circular 6/2012 is in continuation of Finance Circular 46/2011. This circular is also not applicable to the petitioner and he is not entitled to liberalized family pension beyond November 30, 2010. In other words, the stand is that FC 46/2011 is applicable only to pensioners who have not completed 7 years from July 01, 2011 and since that period stands endured the petitioner has no case for enhanced payments beyond November 30, 2010. The Corporation urges that since the petitioner has already received pension for more than 7 years up to July 01, 2011 his rights stand denuded thereafter. In the reply to the legal notice, the date of death of late Smt. Harjit Kaur is wrongly mentioned as November 30, 2011 more than once.

9. Although the written statement dated October 14, 2013 has been filed by the contesting respondents, a reply by way of short affidavit of Additional Secretary, Power, Punjab Bhawan, Chandigarh has been filed on behalf of respondent No.1, the State. It is submitted therein that the grievance of the petitioner is mainly against PSPCL which is a statutory Corporation and takes its own decisions and the decisions of the State of Punjab are not *ipso facto* followed by the Corporation till accepted and adopted by independent resolutions of the Corporation.

10. Heard the learned counsel for the parties and with their assistance, have perused the documents placed on record.

11. It is the contention of Mr. R.K. Arora, learned counsel

appearing for the petitioner that the Corporation has adopted the Punjab Government letter dated December 23, 2011 issued in the Department of Finance in its Pension Policy and Coordination Branch issued vide circular No.46/2011 dated October 28, 2011. The adoption has taken place vide memo dated March 12, 2012 (P-5). It is also not disputed that the petitioner is already in receipt of family pension. He was allotted Pension Payment Order No.1268/04 dated February 27, 2004 and the petitioner was granted family pension @50% up to 7 years and thereafter the family pension was reduced to 30% in terms of the Circular.

12. The present dispute is with regard to Finance Circular No.06/2012 issued vide memo dated March 12, 2012 (P-5) which is the circular adopting Punjab Government Circular 46/2011 dated October 28, 2011. If the claim for enhanced rate of family pension has been declined the same is contrary to the advice issued by the Indian Audit and Accounts Department and the clarification issued by it on June 13, 2012 whereby the benefit of para.2 of the circular would be admissible to the petitioner. It is the further contention of Mr. Arora that once the enhanced scheme of family pension regarding "first 15 years" stands adopted by the Corporation vide Annexure P-4 the entire scheme stands adopted since the circular dated December 23, 2011 of the Punjab Government is admittedly in continuation of the prior circulars and, therefore, the stand of the Corporation is erroneous in denying further enhancement. Mere completion of 7 years from the date of death of late Smt. Harjit Kaur may have expired but that does not mean that the further enhancement would not be applicable.

13. The learned counsel for the State has based his arguments on

the written statement and the reply to the legal notice and has had nothing more to offer to this Court to substantiate the defence of the Corporation and, therefore, I have no hesitation in accepting the contention of Mr. Arora which appears to be just and sound and in conformity with what the Corporation has adopted as its own scheme which is the prevailing policy.

14. As a result of the above discussion, I would allow this writ petition and set aside the stand of the respondents in the reply to the legal notice as erroneous which reply is construed as the impugned decision in the absence of any special order passed in writing rejecting the claim of the petitioner for enhanced family pension. It may be recorded here that the coordinate bench on July 16, 2015 had directed the counsel for the respondent-Corporation to obtain instructions with regard to family pension and to show that the petitioner is not entitled for liberalized family pension. On November 06, 2015 a bald statement was made without any material placed on record to constitute reasons for departure that the summoned record alone would be inspected before submissions are made for a resolution of the dispute in hand. Nothing from that record has been pointed out which would dissuade this Court to take a view other than the one formulated above on a reading of the circulars in issue and the letter adopting the scheme backed by resolution of the respondent Corporation. Ordered accordingly. Parties to bear their own costs.

**(RAJIV NARAIN RAINA)**
**JUDGE**

**08.01.2016**
manju